IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2193 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VALLABHBHAI LAKHMANBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2193 of 2003

MR VK JOSHI for Petitioner No. 1

Mr. Sood, AGP for Respondents.

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 12/08/2004

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India the petitioner has challenged the legality and validity of the order passed by the Collector, Jamnagar dated 29th January 2003 in fixing premium at Rs. 34,12,352/- being 80% of the market price considering the market price at Rs. 80/= per sq.mtr.

with regard to the land in question as on 12th February 1996 (as per the State Government).

2. The petitioner purchased the land in question admeasuring 13 acres and 7 gunthas of land in the year 1994 by registered sale deed. As it was a new tenure land and the petitioner wanted to dispose of the land an application was given for removing restrictions under Section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948 permission was granted and the petitioner was directed to pay an amount of Rs. 57,491/= by way of premium. Thereafter on 29th November 1995 the petitioner made an application for NA permission to the Collector, Jamnagar. On 12th February 1996 the Collector, Jamnagar passed an order granting NA use permission in favour of the petitioner and fixed the market price of the land at Rs. 3,44,250, and the petitioner was directed to pay Rs. 2,40,235 as premium which amount came to be paid by the petitioner on 9th February 1996. After the deposit of the above amount the Collector, Jamnagar had taken the said order in suo motu review on 20th June 1996 and cancelled the order dated 12th February 1996 granting NA use permission in favour of the petitioner. Being aggrieved and dissatisfied with the same, the petitioner preferred a revision application before the Secretary (Appeals) and the Secretary (Appeals) set aside the order passed by the Collector dated 20th June 1996 and directed the Collector, Jamnagar to obtain necessary permission from the Revenue Department of the State Government after submitting necessary proposal and to pass necessary orders in pursuance to permission that may be obtained from the State Government. It seems that the order passed by the Collector setting aside his earlier order was on technical ground to the effect that prior permission of the State Government was not obtained. Thereafter, the Collector, Jamnagar sent a proposal to the State Government in January 2000 and the State Government passed an order to pay 50 percent of the amount of premium which came to Rs. 49,05,256/- and deducting Rs. 2,12,230, the petitioner was directed to deposit/pay an amount of Rs. 46,93,026 by way of premium considering the market price as on the date on which the order passed by the State Government, i.e. in the year 2001. Being aggrieved and dissatisfied with the order passed by the Collector, Jamnagar fixing the premium at Rs. 49,05,256 considering the market price in 2001, the petitioner preferred Special Civil Application No. 10070 of 2000 before this Court which came to be heard and finally disposed of by this Court [Coram: Mr. H.K. Rathod, J.]. This Court by order dated 30th August 2001 allowed the aforesaid Special Civil Application, set

aside the order passed by the Collector, Jamnagar fixing the premium considering the market price of 2001, and directed the Collector to reconsider the case of the petitioner for grant of N.A. permission on the basis of the Government Resolution dated 16th March 1982 and to consider the market price which was prevailing in the year 1996 of the land in question and fix the same accordingly.

2.1. It seems that, thereafter, pursuant to the order passed by this Court, the Collector has passed an order on 29th January 2003 fixing the premium considering the market price at Rs. 80 per sq.mtre. as on 12th February 1996 and directed the petitioner to pay an amount of Rs. 34,12,352/-. Being aggrieved and dissatisfied with the impugned order dated 29th January 2003 passed by the Collector, the petitioner has preferred the present Special Civil Application.

3. Shri Joshi, learned advocate appearing for the petitioner has submitted that the impugned order dated 29th January 2003 is absolutely illegal and against the principles of natural justice. He has further submitted that before passing the impugned order and fixing the premium considering the market price at Rs. 80 no opportunity of hearing was given to the petitioner. He has submitted that there is nothing on record to show that on what basis the premium is fixed considering the market price at Rs. 80 per sq.mtr., and in fact he has disputed the market price of Rs. 80 per sq.mtr. He has submitted that if an opportunity would have been given to the petitioner then the petitioner would have pointed out the correct market price before the Collector. For all these grounds he has requested to allow this Special Civil Application.

4. Shri Sood, learned AGP has submitted that in fact the premium was fixed considering the market price at Rs. 80 per sq.mtr. keeping in view the market price prevalent at the relevant time and the price prevailed during last 5 years and also the usage and the position of the land and therefore there is no illegality committed by the Collector in fixing the market price at Rs. 80 per sq.mtr.

5. Heard the learned advocate for the parties. It is an admitted position that before passing the impugned order dated 29th January 2003, no opportunity of hearing was given to the petitioner. Nothing is on record to show as to how and what basis the premium is fixed considering the market price at Rs. 80 per sq.mtr.

Nothing is reflected in the order. In fact, before passing the order the petitioner was required to be heard and given an opportunity to point out the market price. In fact, the petitioner was required to be given the documents or the material on which reliance is placed by the Collector while fixing the market price at Rs. 80 per sq.mtr. This opportunity was not given to the petitioner and if such opportunity would have been given then the petitioner could have pointed out that the market price which is fixed by the Collector, i.e., at Rs. 80 per sq.mtr. is not correct and he could have pointed out the correct market price. In view of the aforesaid facts and circumstances, only on the ground that the order dated 29th January 2003 was passed without hearing the petitioner and/or giving any opportunity of hearing to the petitioner , the same is required to be quashed and set aside and is accordingly quashed and set aside. The matter is remanded to the Collector, Jamnagar for deciding the amount of premium afresh after giving an opportunity of hearing to the petitioner and the material that may be relied upon by him while considering the market price. Such an exercise shall be undertaken within the period of eight weeks from the date of receipt of this order. The petition is allowed accordingly. Rule is made absolute to the aforesaid extent. Direct service is permitted.

[M.R. Shah, J.]

rmr.